

Exhibit E
Additional Provisions

1. Additional Incorporated Exhibits

A. The following additional exhibits are attached, incorporated herein, and made a part hereof by this reference:

1) Exhibit I Technical Proposal XXX pages

B. The following documents and any subsequent updates are not attached, but are incorporated herein and made part of hereof by this reference. These documents may be updated periodically by California Department of Health Services (CDHS), as required by program directives. CDHS shall provide the Contractor with copies of said documents and any periodic updates thereto, under separate cover. CDHS will maintain on file, all documents referenced herein and any subsequent updates.

1) DHS Health Administrative Manual Section 6-1000.

2. Contract Amendments

Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the State.

3. Cancellation / Termination

A. This agreement may be cancelled by CDHS without cause upon a thirty (30) calendar days advance written notice to the Contractor.

B. CDHS reserves the right to cancel or terminate this agreement immediately for cause. The Contractor may submit a written request to terminate this agreement only if CDHS substantially fails to perform its responsibilities as provided herein.

C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement.

D. Agreement termination or cancellation shall be effective as of the date indicated in CDHS' notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.

E. Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.

F. In the event of early termination or cancellation, the Contractor shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this agreement.

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4. Use of Disabled Veteran Business Enterprises (DVBE)

- A. The State Legislature has declared that a fair portion of the total purchases and contracts or subcontracts for property and services for the State be placed with disabled veteran business enterprises.
- B. All DVBE participation attachments, however labeled, completed as a condition of bidding, contracting, or amending a subject agreement, are incorporated herein and made a part of this agreement by this reference.
- C. Contractor agrees to use the proposed DVBEs, as identified in previously submitted DVBE participation attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDHS, in writing, prior to using a substituted subcontractor.
- D. Requests for substitution must be approved by the program funding this agreement and must include:
 - 1) A written explanation of the reason for the substitution.
 - 2) A written description of the business enterprise that will be substituted, including its DVBE certification status.
 - 3) If applicable, the reason a non-DVBE subcontractor is proposed for use.
 - 4) A written description of the work to be performed by the substituted subcontractor and an identification of the percentage share/dollar amount of the overall contract that the substituted subcontractor will perform.
- E. If requested by CDHS, Contractor agrees to provide verification, in a form agreed to by CDHS, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of contract award or in an applicable amendment.

5. Dispute Resolution Process

- A. This provision replaces and supersedes provision 15 of Exhibit D (F).
- B. If a dispute arises between the Contractor and CDHS, the Contractor must seek resolution using the process outlined below.
 - 1) The Contractor should first informally discuss the problem with the CDHS program contract manager. If the problem cannot be resolved informally, the Contractor must direct the grievance together with any evidence, in writing, to the program Branch Chief. The grievance must state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief must render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. Should the Contractor disagree with the Branch Chief's decision, the Contractor

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may appeal to the second level.

- 2) When appealing to the second level the Contractor must prepare an appeal indicating the reasons for disagreement with the Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal. The decision rendered by the Deputy Director or his/her designee shall be the final administrative determination of the Department.
- 3) Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.
- 4) There are organizational differences within CDHS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDHS program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

6. Insurance Requirements

A. Commercial Liability Insurance

The Contractor must furnish to CDHS a certificate of insurance stating that the commercial general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the Contractor. The commercial general liability insurance policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under the insured agreement. The commercial general liability insurance shall apply separately to each insured against whom the claim is made or suit is brought subject to the Contractor's limit of liability.

- B.** The certificate of insurance must be issued by an insurance company acceptable to the Department of General Services (DGS) Office of Risk and Insurance Management or be provided through partial or total self-insurance acceptable to DGS.

- C.** The certificate of insurance must include the following provisions:

- 1) The insurer will not cancel the insured's coverage without giving thirty (30) days prior written notice to CDHS, and
- 2) The State of California, its officers, agents, employees, and servants are included as

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additional insureds, but only with respect to work performed for the State of California under this agreement.

- D. The Contractor agrees that the insurance required herein will remain in effect at all times during the term of the agreement. In the event said insurance coverage expires at any time or times during the term of this agreement, the Contractor agrees to provide, at least thirty (30) calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for not less than the remainder of the term of this agreement or for a period of not less than one year. New certificates of insurance are subject to the approval of DGS, and the Contractor agrees that no work or services shall be performed prior to such approval. CDHS may, in addition to other remedies it may have, terminate this agreement on the occurrence of such event.
- E. CDHS will not be responsible for any premiums, deductibles, or assessments on any insurance policy.

7. Avoidance of Conflicts of Interest by Contractor

- A. CDHS intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, CDHS reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to CDHS review and prior approval.
- B. Conflicts of interest include, but are not limited to:
 - 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the contract.
 - 2) An instance where the Contractor's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If CDHS is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by CDHS to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by CDHS and cannot be resolved to the satisfaction of CDHS, the conflict will be grounds for terminating the contract. CDHS may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

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8. Domestic Partners

This provision supersedes and replaces Provision 8 (Domestic Partners) in the Department of General Services' Contractor Certification Clauses incorporated by reference within the General Terms and Conditions (GTC) cited on the face of the agreement. Based upon an existing program exemption from Chapter 2 of Part 2 of Division 2 of the Public Contract Code that applies to this agreement, CDHS concludes that this agreement is not subject to the requirements of Public Contract Code Section 10295.3 governing domestic partners.

9. Governing Law

In addition to Exhibit C, General Terms and Conditions, Provision 14, Governing Law, Contractor also agrees to the following:

- A. If it is necessary to interpret this Contract, all applicable laws may be used as aids in interpreting the Contract. However, the parties agree that any such applicable laws shall not be interpreted to create contractual obligations upon CDHS or Contractor, unless such applicable laws are expressly incorporated in to this Contract in some section other than this provision. Except for Exhibit E, Additional Provisions, provision 22, Sanctions, and provision 23, Liquidated Damages, the parties agree that any remedies for CDHS' or Contractor's non-compliance with laws not expressly incorporated into this Contract, or any covenants implied to be part of this Contract, shall not include money damages, but may include equitable remedies such as injunctive relief or specific performance. This Contract is the product of mutual negotiation, and if any ambiguities should arise in the interpretation of this Contract, both parties shall be deemed authors of this Contract.
- B. Any provision of this Contract which is in conflict with current or future applicable Federal or State laws, or regulations, is hereby amended to conform to the provision to those laws and regulations. Such amendment of the Contract shall be effective on the effective date of the statutes or regulations necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.

Such amendment shall constitute grounds for termination of this Contract in accordance with the procedures and provisions of Exhibit E, Additional Provisions, provision 3.C., under Cancellation/Termination. The parties shall be bound by the terms of the amendment until the effective date of the termination.

10. Entire Agreement

This written Contract and any amendments shall constitute the entire agreement between the parties. No oral representations shall be binding on either party unless such representations are reduced to writing and made an amendment to the Contract.

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11. Change Requirements

A. General Provisions

The parties recognize that during the life of this Contract, the Disease Management Pilot Program (DMPP) will be a dynamic program requiring numerous changes to its operations and that the scope and complexity of changes will vary widely over the life of the Contract. The parties agree that the development of a system, which has the capability to implement such changes in an orderly and timely manner, is of considerable importance.

B. Contractor's Obligation to Implement

The Contractor will make changes mandated by CDHS. In the case of mandated changes in regulations, statutes, federal guidelines, or judicial interpretation, CDHS may direct the Contractor to immediately begin implementation of any change by issuing a change order. If CDHS issues a change order, the Contractor will be obligated to implement the required changes while discussions relevant to any rate adjustment, if applicable, are taking place.

CDHS may, at any time, within the general scope of the Contract, by written notice, issue change orders to the Contract.

C. Moral or Religious Objections to Providing a Service

If the Contractor has a moral or religious objection to providing a service or referral for a service for which the Contractor is not responsible, during the term of this agreement, the Contractor shall notify the CDHS in writing providing sufficient detail to establish the moral or religious grounds for the objection.

12. Delegation of Authority

CDHS intends to implement this contract through a single administrator, called the "Contract Manager." CDHS will appoint the Contract Manager. The Contract Manager, on behalf of CDHS, will make all determinations and take all actions appropriate under this Contract, subject to the limitations of applicable Federal and State laws and regulations. The Contract Manager may delegate their authority to act to an authorized representative through written notice to Contractor.

Contractor will designate a single administrator; hereafter called the "Contractor's Representative." The Contractor's Representative, on behalf of the Contractor, will make all determinations and take all actions as appropriate to implement this Contract, subject to the limitations of the Contract, Federal and State laws and regulations. The Contractor's Representative may delegate their authority to act to an authorized representative through written notice to the Contract Manager. The Contractor's Representative will be empowered to legally bind the Contractor to all agreements reached with CDHS.

Contractor shall designate Contractor's Representative in writing and shall notify the Contract Manager in accordance with Exhibit E, Additional Provisions, provision 17, Notices.

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13. Authority of the State

Sole authority to establish define, or determine the reasonableness, the necessity and level and scope of covered benefits under the DMPP administered in this Contract or coverage for such benefits, or the eligibility of such beneficiaries or providers to participate in the DMPP reside with CDHS.

Sole authority to establish or interpret policy and its application related to the above areas will reside with CDHS.

The Contractor may not make any limitations, exclusions, or changes in benefits or benefit coverage; any changes in definition or interpretation of benefits; or any changes in the administration of the Contract related to the scope of benefits, allowable coverage for those benefits, or eligibility of beneficiaries or providers to participate in the program, without the express, written direction or approval from CDHS.

14. Fulfillment of Obligations

No covenant, condition, duty, obligation or undertaking continued or made part of this Contract will be waived except by written agreement of the parties hereto, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever will not constitute a waiver of the covenant, condition, duty, obligation or undertaking to be kept, performed or discharged by the party to which the same may apply; and, until performance or satisfaction of all covenants, conditions, duties, obligations and undertakings is complete, the other party will have the right to invoke any remedy under this Contract, or under law, notwithstanding such forbearance or indulgence.

15. Obtaining CDHS Approval

Contractor shall obtain written approval from CDHS, as provided in Exhibit E, Additional Provisions, provision 36, CDHS Approval Process, prior to commencement of operation under this Contract.

CDHS reserves the right to review and approve any changes to Contractor's protocols, policies, and procedures required for this Contract.

16. Certifications

With respect to any report, invoice, record, papers, documents, books of account, or other Contract required data submitted, pursuant to the requirements of this Contract, the Contractor's Representative or his/her designee will certify, under penalty of perjury, that the report, invoice, record, papers, documents, books of account or other Contract required data is current, accurate, complete and in full compliance with legal and contractual requirements to the best of that individual's knowledge and belief, unless the requirement for such certification is expressly waived by CDHS in writing.

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17. Notices

All notices to be given under this Contract will be in writing and will be deemed given when mailed to CDHS or the Contractor:

State Department of Health Services
Medi-Cal Benefits Branch
1501 Capitol Avenue
P.O. Box 997417, MS 4601
Sacramento, CA 95899-7417

Contractor Name and Address
Attn: Contractor's Representative

18. Term

The Contract will become effective August 1, 2006, and will continue in full force and effect through February 28, 2010, for a total of 43 months.

The term of the Contract consists of the following three periods:

- 1) The Implementation Period shall extend from August 1, 2006 to November 30, 2006 (4 months);
- 2) The Operations Period shall extend from December 1, 2006 to November 30, 2009 (36 months);
- 3) The Phaseout Period shall extend from December 1, 2009 to February 28, 2010 (3 months).

The Operations Period will commence subject to CDHS acceptance of the Contractor's readiness to begin the Operations Period.

19. Contract Extension

CDHS will have the exclusive option to extend the term of the Contract for any Service Area during the last twelve (12) months of the Contract, as determined by the original expiration date or by a new expiration date if an extension option has been exercised. CDHS may invoke up to two (2) separate extensions of up to twelve (12) months each. The Contractor will be given at least nine (9) months prior written notice of CDHS' decision on whether it will exercise this option to extend the contract for each service area.

Contractor will provide written notification to CDHS of its intent to accept or reject the extension within five (5) working days of the receipt of the notice from CDHS.

20. Service Area

The Service Area covered under this Contract includes specific areas of Los Angeles County and Alameda County (see Exhibit E, Additional Provisions, Attachment I, entitled, "Location and Number of Beneficiaries").

21. Phaseout Requirements

- A. CDHS shall retain the lesser of an amount equal to ten percent (10%) of the last month's Service Area case management fee or one million dollar (\$1,000,000) for each Service Area unless provided otherwise, until all activities required during the Phaseout Period for each Service Area are fully completed to the satisfaction of CDHS, in its sole discretion.

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If all Phaseout activities for each Service Area are completed by the end of the Phaseout Period, the withhold will be paid to the Contractor. If the Contractor fails to meet any requirements by the end of the Phaseout Period for each Service Area, CDHS will deduct the costs of the remaining activities from the withhold amount and continue to withhold payments until all activities are completed.

- B. The Phaseout Period will ensure, at the termination of this Contract, the orderly transfer of necessary data and history records is made from the Contractor to CDHS or to a successor Contractor. The Contractor shall not provide services to Members during the Phaseout Period.

Ninety (90) calendar days prior to termination or expiration of the Operations Period and through the three (3) month Phaseout Period for each Service Area, the Contractor shall assist CDHS in the transition of Members, and in ensuring, to the extent possible, continuity of Member-Provider relationships. In doing this, the Contractor will make available to CDHS copies of Medical Records, Members records, and any other pertinent information, including information maintained by any subcontractor, necessary for efficient case management of Members, as determined by CDHS in cooperation with the Medical Director. In no circumstances will a Medical beneficiary be billed for this activity.

- C. Phaseout for the Contractor will consist of the completion of all financial and reporting obligations of the Contractor. The Contractor will submit to CDHS all reports required in Exhibit A, Attachment I, entitled Scope of Work-Contract Performance, Provision A, Contract Administration, paragraph 3., Reporting Requirements, for the period from the last submitted report through the expiration or termination date.

All data and information provided by the Contractor will be accompanied by letter, signed by the responsible authority, certifying, under penalty of perjury, to the accuracy and completeness of the materials supplied.

- D. Phaseout Period will commence on the date the Operations Period of the Contract expires. Phaseout related activities are non-payable items.
- E. The Contractor shall notify Members of their DM benefit and options available upon termination or expiration of this Contract.

22. Sanctions

In the event CDHS finds Contractor non-compliant with any provisions of this Contract, applicable statutes or regulations, CDHS may impose sanctions as provided in Title 22, CCR, Section 51452.

23. Liquidated Damages Provisions

A. General

It is agreed by the State and Contractor that:

- 1) If Contractor does not provide or perform the requirements of this Contract or applicable laws or regulations, damage to the State shall result:

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- a) Proving such damages shall be costly, difficult and time-consuming;
 - b) Should the State choose to impose liquidated damages, Contractor shall pay the State those damages for not providing or unsatisfactorily performing the specified provisions;
 - c) Additional damages may occur in the Service Areas by prolonged periods in which Contractor does not provide or perform requirements;
 - d) The damage figures listed below represent a good faith effort to quantify the range of harm that could reasonably be anticipated at the time of the making of the Contract; and
 - e) CDHS may, at its discretion, offset liquidated damages from case-management fee payments owed to Contractor.
- 2) Imposition of liquidated damages as specified in this provision 23, Liquidated Damages Provisions, paragraph B, entitled Liquidated Damages for Violation of Contract Terms Regarding the Implementation Period, and paragraph C, entitled Liquidated Damages for Violation of Contract Terms or Regulations Regarding the Operations Period, shall follow the administrative processes described below.
 - 3) CDHS shall provide Contractor with written notice of deficiencies specifying the Contractor requirement(s) contained in the Contract or as required by Federal and State law or regulation, not provided or unsatisfactorily performed.
 - 4) During the Implementation Period, Contractor shall submit or complete the outstanding requirement(s) specified in the written notice within five (5) working days from the date for the notice, unless, subject to the Contract Manager's written approval, Contractor submits a written request for extension. The request must include the following: the provisions requiring an extension; the reason for the delay; and the proposed date of the revised submission.
 - 5) During the Implementation Period, if Contractor has not performed or completed an Implementation Period requirement or secured an extension for the submission of the outstanding requirement, CDHS may impose liquidated damages for the amount specified under this provision 23, Liquidated Damages Provisions, paragraph B, entitled Liquidated Damages for Violation of Contract Terms Regarding the Implementation Period.
 - 6) During the Operations Period, Contractor shall demonstrate satisfactory performance of Contractor's requirement(s) specified in the written notice within a thirty (30) calendar day Corrective Action period from the date of the notice. CDHS has the sole discretion to grant an extension subject to prior written request from the Contractor. Such request must be received by CDHS at least 5 days prior to expiration of the Corrective Action period. If the Contractor has not demonstrated the provision or performance of the Contractor's requirement(s) specified in the written notice during the Corrective Action period, CDHS may impose liquidated damages for each day the specified Contractor's requirement is not satisfactorily performed or provided for the amount specified in this provision 23, Liquidated

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Damages Provisions, paragraph C, entitled Liquidated Damages for Violation of Contract Terms or Regulations Regarding the Operations Period.

- 7) During the Operations Period, if Contractor has not performed or provided Contractor's requirement(s) specified in the written notice or secured the written approval for an extension, after thirty (30) calendar days from the first day of the imposition of liquidated damages, CDHS shall notify Contractor in writing of the increase of the liquidated damages to the amount specified in this provision 23, Liquidated Damages Provisions, paragraph C, entitled Liquidated Damages for Violation of Contract Terms or Regulations Regarding the Operations Period.

Nothing in this provision shall be construed as relieving Contractor from performing any other Contract duty not listed herein, nor is the State's right to enforce or to seek other remedies for failure to perform any other Contract duty hereby diminished.

B. Liquidated Damages for Violation of Contract Terms Regarding the Implementation Period

CDHS may impose liquidated damages of \$2,500 per requirement specified in the written notice for each day of the delay in completion or submission of implementation plan requirements beyond the Implementation Period as specified in Exhibit A, Attachment I, entitled Scope of Work – Contract Performance, Provision J, entitled Implementation Plan and Deliverables.

If CDHS determines that a delay or other unsatisfactory performance was caused in part by the State, CDHS will reduce the liquidated damages proportionately.

C. Liquidated Damages for Violation of Contract Terms or Regulations During the Operations Period

CDHS may impose liquidated damages of \$500 per violation of Contract requirement not performed in accordance with Exhibit A, Attachment I, entitled Scope of Work – Contract Performance, Provision G, entitled Member Services – Scope of Services.

If CDHS determines that a delay or other unsatisfactory performance was caused in part by the State, CDHS will reduce the liquidated damages proportionately.

D. Liquidated Damages for Violation of Contract Terms Regarding the Phaseout Period

CDHS may impose liquidated damages of \$500 per requirement specified in the written notice for each day of the delay in completion of Phaseout requirements beyond the Phaseout Period as specified in this Exhibit E, Additional Provisions, provision 21, entitled Phaseout Requirements.

If CDHS determines that a delay or other unsatisfactory performance was caused in part by the State, CDHS will reduce the liquidated damages proportionately.

E. Conditions for Termination of Liquidated Damages

Except as waived by the Contract Manager, no liquidated damages imposed on Contractor will

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be terminated or suspended until the Contractor issues a written notice of correction to the Contract Manager certifying, under penalty of perjury, the correction of condition(s) for which liquidated damages were imposed. Liquidated damages will cease on the day of the Contractor's certification only if the subsequent verification of the correction by CDHS establishes that the correction has been made in the manner and at the time certified to by the Contractor.

The Contract Manager will determine whether the necessary level of documentation has been submitted to verify corrections. The Contract Manager will be the sole judge of the sufficiency and accuracy of any documentation. Corrections must be sustained for a reasonable period of at least ninety (90) calendar days from CDHS acceptance; otherwise, liquidated damages may be re-imposed without a succeeding grace period within which to correct. Contractor's use of resources to correct deficiencies will not be allowed to cause other Contract compliance problems.

F. Severability of Individual Liquidated Damages Clauses

If any portion of these liquidated damages provisions is determined to be unenforceable, the other provisions will remain in full force and effect.

24. Disputes

In addition to Exhibit C, entitled General Terms and Conditions, provision 6, Disputes, Contractor also agrees to the following:

This section will be used by the Contractor as the means of seeking resolution of disputes on contractual issues.

Filing a dispute will not preclude CDHS from recouping the value of the amount in dispute from the Contractor or from offsetting this amount from subsequent case management fee(s). If the amount to be recouped exceeds twenty-five percent (25%) of the case management fee, amounts of up to twenty-five percent (25%) will be withheld from successive case management fees until the amount in dispute is fully recouped.

A. Disputes Resolution by Negotiation

CDHS and Contractor agree to negotiate in good faith to try to resolve all contractual issues to the mutual agreement of the parties at the Contract Manager level without litigation. The parties recognize that the implementation of this policy depends on open-mindedness, and the need for both sides to present adequate supporting information on all matters in question or dispute.

B. Notification of Dispute

Within fifteen (15) calendar days of the date the dispute concerning performance of this Contract arises or otherwise becomes known to the Contractor, the Contractor will notify the Contract Manager in writing of the dispute, describing the conduct (including actions, inactions, and written and oral communications) which it is disputing.

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The Contractor's notification will state, on the basis of the most accurate information then available to the Contractor, the following:

- 1) That it is a dispute pursuant to this section.
- 2) The date, nature, and circumstances of the conduct, which is subject of the dispute.
- 3) The names, phone numbers, function, and activity of the Contractor, subcontractor(s), CDHS/State official(s) or employee(s) involved in or knowledgeable about the conduct.
- 4) The identification of any documents and the substances of any oral communications involved in the conduct. Copies of all identified documents will be attached.
- 5) The reason the Contractor is disputing the conduct.
- 6) The cost impact to the Contractor directly attributable to the alleged conduct, if any.
- 7) The Contractor's desired remedy.

The required documentation, including cost impact data, will be carefully prepared and submitted with substantiating documentation by the Contractor. This documentation will serve as the basis for any subsequent appeal.

Following submission of the required notification with supporting documentation, the Contractor will diligently continue performance of this Contract, including matters identified in the Notification of Dispute, to the maximum extent possible.

C. Contract Manager's or Designee

Pursuant to a request by Contractor, the Contract Manager may provide for a dispute to be decided by a designee designated by CDHS; who is not the Contract Manager and is not directly involved in the DMPP. Any disputes concerning performance of this Contract shall be decided by the Contract Manager or the designee in a written decision stating the factual basis for the decision. Within thirty 30 calendar days of receipt of a Notification of Dispute, the Contract Manager or designee shall either:

- 1) Find in favor of Contractor, in which case the Contract Manager or designee:
 - a) Countermand the earlier conduct which caused Contractor to file a dispute; or
 - b) Reaffirm the conduct and, if there is a cost impact sufficient to constitute a change in obligations pursuant to Exhibit B, Payment Provisions, direct CDHS to comply with that Exhibit; or
- 2) Deny Contractor's dispute and, where necessary, direct the manner of future performance; or

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- 3) Request additional substantiating documentation in the event the information in Contractor's notification is inadequate to permit a decision to be made under 1) or 2) above, and shall advise Contractor as to what additional information is required, and establish how that information shall be furnished. Contractor shall have thirty (30) calendar days to respond to the Contract Manager or designee's request for further information. Upon receipt of this additional requested information, the Contract Manager or designee shall have thirty (30) calendar days to respond with a decision. Failure to supply additional information required by the Contract Manager or designee within the time period specified above shall constitute waiver by Contractor of all claims in accordance with paragraph F, entitled Waiver of Claims, in this provision 24, Disputes.

A copy of the decision shall be served on the Contractor.

D. Appeal of Contract Manager's or Designee's Decision

Contractor shall have thirty (30) calendar days following the receipt of the decision to file an appeal of the decision to the Director. All appeals shall be governed by Health and Safety Code Section 100171, except for those provisions of Section 100171(d)(1) relating to accusations, statements of issues, statement to respondent, and notice of defense. All appeals shall be in writing and shall be filed with CDHS' Office of Administrative Hearings and Appeals. An appeal shall be deemed filed on the date it is received by the Office of Administrative Hearings and Appeals. An appeal shall specifically set forth each issue in dispute, and include Contractor's contentions as to those issues. However, Contractor's appeal shall be limited to those issues raised in its Notification of Dispute filed pursuant to paragraph B, Notification of Dispute, in this provision 24. Failure to appeal the decision in a timely manner shall constitute a waiver by the Contractor of all claims arising out of that conduct, in accordance with paragraph F, Waiver of Claims, of this provision 24. Contractor shall exhaust all procedures provided for in this provision, prior to initiating any other action to enforce this Contract.

E. Contractor Duty to Perform

Pending final determination of any dispute hereunder, Contractor shall proceed diligently with the performance of this Contract and in accordance with the Contract Manager's or designee's decision.

If, pursuant to an appeal under paragraph D, Appeal of Contract Manager or Designee's Decision, of this provision 24, the Contract Manager's or designee's decision is reversed, the effect of the decision pursuant to paragraph D, Appeal of Contract Manager or Designee's Decision, shall be retroactive to the date of the Contract Manager's or designee's decision, and Contractor shall promptly receive any benefits of such decision. CDHS shall not pay interest on any amounts paid pursuant to a Contract Manager's or designee's decision or any appeal of such decision.

F. Waiver of Claims

If Contractor fails to submit a Notification of Dispute, supporting and substantiating documentation, any additionally required information, or an appeal of the Contract Manager's or designee's decision, in the manner and within the time specified in this provision, that failure

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shall constitute a waiver by Contractor of all claims arising out of that conduct, whether direct or consequential in nature.

25. Audit

In addition to Exhibit C, General Terms and Conditions, Provision 4, Audit, Contractor also agrees to the following:

The Contractor will maintain such books and records necessary to disclose how the Contractor discharged its obligations under this Contract. These books and records will disclose the quantity of disease management (DM) covered services provided under this Contract, the quality of those services, the manner and amount of payment for those services, the person eligible to receive DM covered services, the manner in which the Contractor administered its daily business, and the cost thereof.

A. Books and Records

These books and records will include, but are not limited to, all physical records originated or prepared pursuant to the performance under this Contract including working papers; reports submitted to CDHS; financial records; all Medical records, medical charts and prescription information; and other documentation pertaining to DM covered services rendered to Members.

B. Records Retention

Notwithstanding any other records retention time period set forth in this Contract, these books and records will be maintained for a minimum of five (5) years from the end of the current Fiscal Year in which the date of service occurred; in which the record or data was created or applied; and for which the financial record was created or the Contract is terminated, or, in the event the Contractor has been duly notified that CDHS, Department of Health and Human Services (DHHS), California Department of Justice Bureau of Medi-Cal Fraud (DOJ), or the Comptroller General of the United States, or their duly authorized representatives, have commenced an audit or investigation of the Contract, until such time as the matter under audit or investigation has been resolved; whichever is later.

26. Inspection Rights

In addition to Exhibit D (F), Special Terms and Conditions, Provision 8, Site Inspection, Contractor also agrees to the following:

Through the end of the records retention period specified in Exhibit E, Additional Provisions, provision 25, Audit, paragraph B, Records Retention, Contractor shall allow the CDHS, DHHS, DOJ, the Comptroller General of the United States, Department of Managed Health Care, and other authorized State agencies, or their duly authorized representatives, including CDHS' contracted evaluation consultant, to inspect, monitor or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Contract, and to inspect, evaluate, and audit any and all books, records, and facilities maintained by Contractor and subcontractors pertaining to these services at any time during normal business hours.

Exhibit E

Additional Provisions

Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance under this Contract, including working papers, reports, financial records, and books of account, Medical Records, prescription files, laboratory results, Subcontracts, information systems and services rendered to Members. Through the end of the records retention period specified in Exhibit E, Additional Provisions, provision 25, entitled Audit, Contractor shall furnish any record, or copy of it, to CDHS or any other entity listed in this section, at Contractor's sole expense, on request.

Authorized State and Federal agencies will have the right to monitor all aspects of the Contractor's operation for compliance with the provisions of this Contract and applicable Federal and State laws and regulations. Such monitoring activities will include, but are not limited to, inspection and auditing of Contractor, subcontractor(s), and provider facilities, management systems and procedures, and books and records as the Director deems appropriate, at any time during the Contractor's or other facilities normal business hours. The monitoring activities will be either announced or unannounced.

To assure compliance with the Contract and for any other reasonable purpose, the State and its authorized representatives and designees will have the right to access the premise(s), with or without notice to the Contractor. This will include the MIS operations site or such other place where duties under the Contract are being performed.

Staff designated by authorized State agencies will have access to all security areas and the Contractor will provide, and will require any and all of its subcontractors to provide, reasonable facilities, cooperation and assistance to State representative(s) in the performance of their duties. Access will be undertaken in such a manner as to not unduly delay the work of the Contractor and/or the subcontractor(s).

27. Confidentiality of Information

In addition to Exhibit D (F), Special Terms and Conditions, Provision 13, Confidentiality of Information, Contractor also agrees to the following duties and responsibilities with respect to confidentiality of information and data:

- A. Notwithstanding any other provision of this Contract, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 42, CFR, Section 431.300 et seq., Section 14100.2, Welfare and Institution Code, and regulations adopted there under. For the purpose of this Contract, all information, records, data, and data elements collected and maintained for the operation of the contract and pertaining to Members shall be protected by the Contractor from unauthorized disclosure.

Contractor may release Medical Records in accordance with applicable law pertaining to the release of this type of information.

- B. With respect to any identifiable information concerning a Member under this Contract that is obtained by the Contractor or its subcontractors, the Contractor: 1) will not use any such information for any purpose other than carrying out the express terms of this contract, 2) will promptly transmit to CDHS all requests for disclosure of such information, 3) will not disclose except as otherwise specifically permitted by this Contract, any such information to any party

Exhibit E
Additional Provisions

other than CDHS without CDHS' prior written authorization specifying that the information is releasable under Title 42, CFR, Section 431.300 et seq., Section 14100.2 Welfare and Institutions Code, and regulations adopted there under, and 4) will, at the termination of this Contract, return all such information to CDHS or maintain such information according to written procedures sent to the Contractor by CDHS for this purpose.

28. Records Related to Recovery for Litigation

Upon request by CDHS, Contractor shall gather in a timely manner, preserve and provide to CDHS, in the form and manner specified by CDHS, any information specified by CDHS, subject to any lawful privileges, in Contractor's or its subcontractor's possession, relating to threatened or pending litigation by or against CDHS. If Contractor asserts that any requested documents are covered by a privilege, Contractor shall: 1) identify such privileged documents while retaining the privilege; and 2) state the privilege being claimed that supports withholding production of the document. Such request shall include, but is not limited to, a response to a request for documents submitted by any party in any litigation by or against CDHS. Contractor acknowledges that time may be of the essence in responding to such request. Contractor shall use all reasonable efforts to immediately notify CDHS of any subpoenas, document production request, or requests for records, received by Contractor or its subcontractors related to this Contract or subcontracts entered into under this Contract.

29. Fraud and Abuse Reporting

Contractor shall report to the Contract Manager all cases of suspected fraud and/or abuse, as defined in 42 CFR, Section 455.2, where there is reason to believe that an incident of fraud and/or abuse has occurred, by subcontractors, Members, providers, or employees within ten (10) working days of the date when Contractor first becomes aware of or is on notice of such activity. Contractor shall establish policies and procedures for identifying, investigating and taking appropriate corrective action against fraud and/or abuse in the provision of DM covered services under the Medi-Cal program. Contractor shall notify CDHS prior to conducting any investigations, based upon Contractor's finding that there is reason to believe that an incident of fraud and/or abuse has occurred, and, upon the request of CDHS, consult with CDHS prior to conducting such investigations. Without waiving any privileges of Contractor, Contractor shall report investigation results within ten (10) working days of conclusion of any fraud and/or abuse investigation.

30. Equal Opportunity Employer

Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state it is an equal opportunity employer, and will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by CDHS, advising the labor union or workers' representative of the Contractor's commitment as an equal opportunity employer and will post copies of the notice in conspicuous places available to employees and applicants for employment.

Exhibit E
Additional Provisions

31. Discrimination Prohibitions

A. Member Discrimination Prohibition

Contractor shall not discriminate against members or eligible members because of race, color, creed, religion, ancestry, marital status, sexual orientation, national origin, age, sex, or physical or mental handicap in accordance with Title VI or the Civil Rights Act of 1964, 42 USC Section 2000d, rules and regulations promulgated pursuant thereto, or as otherwise provided by law or regulations. For the purpose of this Contract, discriminations on the grounds of race, color, creed, religion, ancestry, age, sex, national origin, marital status, sexual orientation, or physical or mental handicap include, but are not limited to, the following:

- 1) Denying any member any DM covered services;
- 2) Providing to a Member any DM covered services which are different, or are provided in a different manner or at a different time from those provided to other members under this Contract except where medically indicated;
- 3) Subjecting a member to segregation or separate treatment in any manner related to the receipt of any DM covered services.
- 4) Restricting a member in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any DM covered services; treating a member or eligible member differently from others in determining whether he or she satisfies admission; enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any DM covered services.

Contractor shall take affirmative action to ensure that members are provided DM covered services without regard to race, color, national origin, creed, ancestry, religion, language, age, gender, marital status, sexual orientation, health status, or disability, except where medically indicated.

B. Discrimination Related to Health Status

Contractor shall not discriminate among eligible members on the basis of their health status requirements or requirements for health care services during enrollment, re-enrollment, or disenrollment. Contractor will not terminate the enrollment of an eligible beneficiary based on an adverse change in the member's health unless the change in health status affects the Member's eligibility for the program.

C. Discrimination Complaints

Contractor agrees that copies of all complaints alleging discrimination against members or eligible members because of race, color, national origin, creed, ancestry, religion, language, age, gender, marital status, sexual orientation, health status, or disability, will be forwarded to CDHS for review and appropriate action.

Exhibit E
Additional Provisions

32. Americans with Disabilities Act of 1990 Requirements

Contractor shall comply with all applicable federal requirements in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (42 USC, Section 12101 et seq.), Title 45, Code of Federal Regulations (CFR), Part 84. Title IX of the Education Amendments of 1972 (regarding education programs and activities), and the Age Discrimination Act of 1975.

33. Word Usage

Unless the context of this Contract clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," "must," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; and (e) "includes" and "including" are not limiting.

34. Program Information

CDHS shall provide Contractor with complete and current information with respect to pertinent policies, procedures, and guidelines affecting the operation of this Contract, within thirty (30) calendar days of receipt of Contractor's written request for information, to the extent that the information is readily available. If the requested information is not available, CDHS shall notify Contractor within thirty (30) calendar days, in writing, of the reason for the delay and when Contractor may expect the information.

35. Financial Statements

The **successful** Proposer must submit one of the following after the contract award is made to their firm. This submission must be received prior to the contract effective date.

- A. An audit report (only the three paragraph statement including the third paragraph auditor's opinion) from an independent auditor. The report must not list any "going concern" issue regarding the Proposer's ability to operate for the upcoming year from the end of the audit's fieldwork. The audit report must be from an audit completed within the last 12 months from the date of this RFP release. However, neither financial documents nor audit documents shall be submitted.
- B. A letter of credit from an FDIC insured financial institution for at least \$2,000,000 that is current on the date that the letter of credit is submitted to CDHS. This letter will serve as an indication that the Proposer has access to adequate operating capital to undertake the DMPP. No other financial documentation other than the letter of credit shall be submitted.

36. CDHS Approval Process

Within sixty (60) calendar days of receipt, CDHS shall make all reasonable efforts to approve in writing the use of such material provided to CDHS, provide Contractor with a written explanation why its use is not approved, or provide a written estimated date of completion of CDHS' review process. If CDHS does not complete its review of submitted material within sixty (60) calendar days of receipt, or within the estimated date of completion of CDHS review, Contractor may elect to implement or use the material at Contractor's sole risk and subject to possible subsequent

Exhibit E
Additional Provisions

disapproval by CDHS. This paragraph shall not be construed to imply CDHS approval of any material that has not received written CDHS approval. This paragraph shall not apply to Subcontracts or sub-subcontracts.

Exhibit E, Attachment 1

Contractor's Name
XX-XXXXX

Location/Number of Beneficiaries

Los Angeles County

Zip Code
90026
90027
90028
90029
90031
90032
90033
90034
90046
90201
90255
90280
91201
91205
91206
91331
91402
91605
91606

Alameda County

All Zip Codes

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

Submission of Final Invoice

Pursuant to **contract number** _____ entered into between the State of California Department of Health Services (DHS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via **invoice number(s)** _____, in the **amount(s) of \$** _____ and **dated** _____.
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment, will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies or products offered or used in the performance of the above referenced contract meets or exceeds the minimum percentage of recycled material, as defined in Public Contract Code Sections 12161 and 12200.

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by DHS or purchased with or reimbursed by contract funds)

Unless DHS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another DHS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to DHS, at DHS's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): _____

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

DHS Distribution: Accounting (Original) Program

Exhibit G
HIPAA Business Associate Addendum

I. Recitals

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- B. The Department of Health Services ("DHS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI").
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- E. As set forth in this Agreement Contractor, here and after, is the Business Associate of DHS that provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHS and creates, receives, maintains, transmits, uses or discloses PHI.
- F. DHS and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- G. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- H. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

1. Permitted Uses and Disclosures of PHI by Business Associate

- A. ***Permitted Uses and Disclosures.*** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHS, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHS.
- B. ***Specific Use and Disclosure Provisions.*** Except as otherwise indicated in this Addendum, Business Associate may:
 - 1) ***Use and disclose for management and administration.*** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will

Exhibit G
HIPAA Business Associate Addendum

remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

- 2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to DHS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHS with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of DHS.

2. Responsibilities of Business Associate

Business Associate agrees:

- A. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of DHS; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide DHS with its current and updated policies.
- C. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI, and provide data security procedures for the use of DHS at the end of the contract period. These steps shall include, at a minimum:
- 1) Complying with all of the data system security precautions listed in this Agreement or in an Exhibit attached to this Agreement;
 - 2) Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHS under this Agreement;
 - 3) Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
 - 4) Complying with the safeguard provisions in the Department's Information Security Policy, embodied in Health Administrative Manual (HAM), sections 6-1000 et seq. and in the Security and Risk Management Policy in the Information Technology Section of the State Administrative Manual (SAM), sections 4840 et seq., in so far as the security standards in these manuals apply to Business Associate's operations. In case of a conflict between any of the security standards contained in any of these four enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with DHS.

Exhibit G
HIPAA Business Associate Addendum

- D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.
- E. **Business Associate's Agents.** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of DHS, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents or subcontractors.
- F. **Availability of Information to DHS and Individuals.** To provide access as DHS may require, and in the time and manner designated by DHS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHS (or, as directed by DHS), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for DHS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHS health plans; or those records used to make decisions about individuals on behalf of DHS. Business Associate shall use the forms and processes developed by DHS for this purpose and shall respond to requests for access to records transmitted by DHS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- G. **Amendment of PHI.** To make any amendment(s) to PHI that DHS directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by DHS.
- H. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHS, or created or received by Business Associate on behalf of DHS, available to DHS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHS or by the Secretary, for purposes of determining DHS's compliance with the HIPAA regulations.
- I. **Documentation of Disclosures.** To document and make available to DHS or (at the direction of DHS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. **Notification of Breach.** During the term of this Agreement:
- 1) **Discovery of Breach.** To notify DHS **immediately by telephone call plus e-mail or fax** upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person; or **within 24 hours by e-mail or fax** of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the DHS contract manager, the DHS Privacy Officer and the DHS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the DHS ITSD Help Desk. Business Associate shall take:
 - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

Exhibit G
HIPAA Business Associate Addendum

- 2) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, to notify the DHS contract manager, the DHS Privacy Officer, and the DHS Information Security Officer of:
- What data elements were involved and the extent of the data involved in the breach,
 - A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
 - A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
 - A description of the probable causes of the improper use or disclosure; and
 - Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- 3) **Written Report.** To provide a written report of the investigation to the DHS contract manager, the DHS Privacy Officer, and the DHS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The DHS contract manager, the DHS Privacy Officer, and the DHS Information Security Officer shall approve the time, manner and content of any such notifications.
- 5) **DHS Contact Information.** To direct communications to the above referenced DHS staff, the Contractor shall initiate contact as indicated herein. DHS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Agreement or Addendum.

DHS Contract Manager	DHS Privacy Officer	DHS Information Security Officer
See Provision 4 of Exhibit A for Contract Manager Information	Privacy Officer % Office of Legal Services California Department of Health Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413 Telephone: (916) 440-7750 Email: privacyofficer@dhs.ca.gov	Information Security Officer Information Security Office P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: dhsiso@dhs.ca.gov Telephone: ITSD Help Desk 916-440-7000 or 800-579-0874

- K. **Employee Training and Discipline.** To train and use reasonable measures to ensure compliance with the requirements of this Addendum by employees who assist in the performance of functions or activities on behalf of DHS under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Addendum, including by termination of employment.

Exhibit G
HIPAA Business Associate Addendum

3. Obligations of DHS

DHS agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that DHS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices: <http://www.dhs.ca.gov/hipaa>.
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that DHS has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHS.

4. Audits, Inspection and Enforcement

From time to time, DHS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the DHS Privacy Officer in writing. The fact that DHS inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does DHS's:

- A. Failure to detect or
- B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of DHS's enforcement rights under this Agreement and this Addendum.

5. Termination

- A. **Termination for Cause.** Upon DHS's knowledge of a material breach of this Addendum by Business Associate, DHS shall:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHS;
 - 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
 - 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.
- B. **Judicial or Administrative Proceedings.** Business Associate will notify DHS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. DHS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. DHS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.

Exhibit G
HIPAA Business Associate Addendum

- C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHS (or created or received by Business Associate on behalf of DHS) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

6. Miscellaneous Provisions

- A. **Disclaimer.** DHS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHS's request, Business Associate agrees to promptly enter into negotiations with DHS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. DHS may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by DHS pursuant to this Section or
 - 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHS at no cost to DHS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than DHS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

Exhibit G

HIPAA Business Associate Addendum

- F. ***Regulatory References.*** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. ***Survival.*** The respective rights and obligations of Business Associate under Section 6.C of this Addendum shall survive the termination or expiration of this Agreement.
- H. ***No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.